

News You Can Use



Because You're Different

Workers' Comp

Class Code Changes Okayed by Insurance Dept

IF YOU have staff who work remotely, you'll want to pay attention to changes that are coming to the workers' compensation class code you use for them.

Starting Sept. 1, California's telecommuter class code will finally get its own pure premium rate, that is lower than what's currently being charged.

Since many people started working remotely after the COVID-19 pandemic began in 2020, the Workers' Compensation Insurance Rating Bureau created a new telecommuter class code (8871) and tethered its pure premium advisory rate to the 8810 clerical classification for easier administration.

Now, under the Rating Bureau's workers' compensation regulatory filing which was adopted by the California Department of Insurance on May 25, code 8871 will receive its own rate, separate from the clerical rate. In fact, the new telecommuter rate will be 25% lower than the clerical rate due to the former's lower losses and higher average payroll.

If you have remote workers, you'll want to ensure they are in the telecommuter class code to enjoy the lower premium.

New X-Mod threshold

The approval of the filing also increases the workers' comp premium threshold for experience rating (being eligible for an X-Mod) to \$10,200 from \$9,200 to account for wage inflation.

NEW CODE:

Remote workers will get their own unique workers' comp class code starting in September.

Restaurant classification split

Other changes include splitting the 9079 restaurant classification into six new codes (see box below), effective Sept. 1, 2024.

While there will be six codes, they will still be combined for rate-making purposes until the Rating Bureau collects a few years of data from the new codes, so that it can set individual rates for each of them. ❖

NEW RESTAURANT CODES

- **9058** Hotel/Motels/Short-Term Housing – Food/Beverage
- **9080** Restaurants – Full Service
- **9081(1)** Restaurants – Not Otherwise Classified
- **9081(2)** Concessionaires
- **9082** Catering
- **9083** Restaurants – Fast Food/Fast Casual
- **9084** Bars/Taverns

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EEOC Guidance

New Rules for Using AI in Employment Decisions

THE EQUAL Employment Opportunity Commission has issued new guidance on how employers can properly use software, algorithms and artificial intelligence-driven decision-making tools when screening job applicants and selecting candidates.

The EEOC has grown concerned about possible adverse impacts of these technologies that can help employers with a wide range of employment matters, like hiring decisions, recruitment, retention, monitoring performance, and determining pay, promotions, demotions, dismissals and referrals.

The guidance follows the EEOC's recent announcement that it would pursue enforcement of violations of Title VII of the Civil Rights Act of 1964 and other statutes under its jurisdiction arising from use of AI in employment decisions.

Algorithmic Decision-Making Tools

- Resumé scanners that prioritize applications using certain keywords,
- Monitoring software that rates employees on the basis of their keystrokes or other factors, and
- Testing software that provides "job fit" scores for applicants or employees.

The new guidance includes a series of questions and answers to help employers prevent the use of AI and other technologies from leading to discrimination on the basis of on race, color, religion, sex or national origin, in violation of Title VII.

Main points of the guidance:

Responsibility: Employers are ultimately responsible for discriminatory decisions rendered by algorithmic decision-making tools, even if they are administered by another entity, such as a software vendor.

Assessment: Employers should assess whether their use of technology has an adverse impact on a particular protected group by checking whether use of the procedure causes a selection rate for

individuals in the group that is "substantially" less than the selection rate for individuals in another group.

The selection rate for a group of applicants or candidates is calculated by dividing the number of persons hired, promoted or otherwise selected from the group by the total number of candidates in that group.

Adverse Selection Example

An employer screens applicants by having them take a personality test that is scored using an algorithm. During the process, 100 white individuals and 50 Black individuals take the test, after which 60 of the white applicants and 15 of the Black applicants advance to the next round of the selection process.

Based on these results, the selection rate for whites is 60/100 (equivalent to 60%), and the selection rate for Blacks is 15/50 (equivalent to 30%).

This may indicate adverse selection.

If an employer is in the process of implementing a selection tool and discovers that using it would have an adverse impact on individuals of a protected class, it can take steps to reduce the impact or select a different tool, per the guidance.

If an employer fails to adopt a less discriminatory algorithm than that which was considered during the implementation process, it could result in liability, according to the EEOC.

The takeaway

Employers using algorithmic decision-making tools for employment decisions need to take the same care as they do when making employment moves without assistance from technology.

Firms should not implement these technologies without considering possible adverse decision-making that could lead to violations of the law and prompt litigation and regulatory action by the EEOC.

Experts advise that you move forward carefully and work with the vendor to ensure the technology doesn't get your organization in trouble. ❖

Pricing Trend

Hard Commercial Property Market Lingers

THE COMMERCIAL property insurance market continues hardening, with average rates up 9.3% in the first quarter of 2023, according to MarketScout.

Rates for business properties have been climbing steadily for the last six years, but those increases have grown at a faster clip since the COVID-19 pandemic crippled global supply chains and disrupted economies around the world.

Rate increases are the highest for properties in areas at greater risk of natural catastrophes, such as hurricanes in Southern coastal and Gulf states, tornados in the Midwest and wildfires in the West.

Premiums doubling or tripling for at-risk properties is not unheard of, and some especially vulnerable homes may not be able to find coverage in some parts of the country, such as Florida and California.

If your business insurance policy renewal is coming up, here's an explainer of what is driving rates this year.

Rate increase drivers

A convergence of factors has caused this rate-hardening cycle in the commercial property insurance space:

Catastrophe losses – According to the “Weather, Climate and Catastrophes” report by Aon Plc., U.S. insured losses from natural disasters reached \$99 billion in 2022, largely driven by:

- Hurricane Ian, which caused an estimated \$50 billion to \$55 billion in insured losses.
- Severe convective storms in a number of states, which resulted in 12 events each causing more than \$1 billion in insured losses, for a total of \$29 billion.
- Droughts and heatwaves in the West, which caused an estimated \$8 billion in insured losses.

Rising reinsurance rates – Property reinsurance rates are climbing due to increasing catastrophes and the costs of rebuilding. Insurers contract with reinsurers to share the risk and a number of reinsurers have recorded substantial natural catastrophe losses recently.

Reinsurers have started requiring insurers to carry more of the risk and they've tightened their terms in addition to raising rates.

Higher construction costs – Led by a 55% increase in the cost of structural steel and a 35% leap in lumber prices, the costs of rebuilding and repairs have been steadily marching higher over the past three years.

Nonresidential construction costs have climbed 36% and multifamily residential construction costs have jumped 32%.

Labor shortage – Construction costs are also rising due to the severe labor shortage affecting the industry. Construction wages and salaries have increased 16% over the past three years.

And despite those higher wages, 90% of contractors are having a hard time finding enough workers, which is delaying the completion of many projects.

What you can do

Come renewal, one of the main areas insurers are especially focused on is property valuation and getting policy limits right. You may want to revisit the estimated replacement costs of your buildings and equipment to ensure your policy limits are enough to cover a total loss.

It's also a good idea to get an early start on your renewals so we can ensure that you can get the best rate possible, be that from your current insurer or a competitor. ❖

Get the Scoop on Bereavement Leave Law

THE CALIFORNIA Civil Rights Department recently released a detailed set of [frequently asked questions](#) about a new bereavement law, which requires employers in the state with five or more workers to provide leave for up to five days to a worker who loses an immediate family member.

The law, which took effect Jan. 1, 2023, covers bereavement leave upon the death of a:

- Spouse
- Child
- Parent
- Sibling
- Grandparent
- Grandchild
- Domestic partner
- Parent in-law.

While the law requires employers with five or more employees to grant the five days of bereavement leave, they are not required to provide paid leave for those days.

The law provides “job protected leave,” meaning employers are barred from denying requests for leave and from retaliating against a worker who takes bereavement leave.

According to the new FAQs:

- The employer may require an employee to provide documentation of the death. Examples of acceptable documentation include “a death certificate, a published obituary, or written verification of death, burial, or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution, or governmental agency.”
- Leave doesn’t have to be taken all at once. Employees have three months after the death of their loved one to take leave. And they could take three days off after the death of their

loved one, and then another two days around the time of the funeral.

- Eligibility depends on the size of the employer and the bereaved worker’s tenure. To be eligible for bereavement leave, an employee must have been employed for at least 30 days with the company before taking the leave and the employer must have five or more workers.

Steps you should take

You should review the law for complete information on employees’ entitlement to bereavement leave to ensure compliance, and should consider implementing or updating current policies.

If your organization already grants bereavement leave, make sure you update your policies to reflect the mandatory five days. If you provide paid bereavement leave of, say, three days you can still pay them for those days and they can use paid time off or vacation days for the other two days or opt to take them without pay.

Employers can’t deny the bereavement leave. The FAQs advise workers who feel their bereavement leave rights have been violated or they have been subjected to discrimination, harassment or retaliation at work for requesting or using bereavement leave, to file a complaint with the state’s Consumer Rights Division.

The right to take bereavement leave is subject to the Civil Rights Department’s small employer family leave mediation program.

This program gives small employers (of five to 19 employees) and their current or former employees the right to mediate certain disputes, including those regarding bereavement leave, through the department’s Dispute Resolution Division.

You can get more details [here](#). ❖